



INSTRUCTION CPL 2-2.31

DATE: May 14, 1982
SUBJECT: Procedures Governing Enforcement Activities
Involving Access to Employee Medical Records
TO: TOSHA Personnel

FROM: Chief, Standards & Procedures *RBE*
Chief, Health Standards Enforcement *HAB*
THRU: Director *TB* / Asst Director *DEW*

- A. PURPOSE: To provide guidance for implementing the policy and procedures concerning TOSHA access to employee medical records as set forth in TOSHA Instruction CPL 2.22.
- B. DOCUMENT AFFECTED: TOSHA Instruction CPL 2.22; dated March 1, 1982; Subject: Access To Employee Medical Records.
- C. DOCUMENTS REFERENCED:
- 1 This instruction adopts the provisions of OSHA Instruction CPL 2-2.33; dated February 8, 1982; Subject: 29 CFR 1913.10, Rules of Agency Practice and Procedures Concerning OSHA Access to Employee Medical Records - Procedures Governing Enforcement Activities.
 2. TOSHA Instruction CPL 2-2.29; dated May 13, 1982; Subject: Authorization of Review of Medical Opinions.
 - 3 TOSHA Instruction CPL 2-2.30; dated May 13, 1982; Subject: Authorization of Review of Specific Medical Information.
- D. STANDARD REFERENCED: 29 CFR 1910.20 Access to Employee Exposure and Medical Records.
- E AUTHORIZATION TO REVIEW MEDICAL RECORDS: Before obtaining access to personally identifiable employee medical information, it must be determined by the TOSHA Supervisory Industrial Hygienist (Area Supervisor) that there is an identifiable and supportable need to gain access for TOSHA enforcement purposes.

TOSHA compliance personnel are permitted access to employee medical information for the limited purpose of verifying employer compliance with recordkeeping requirements; i.e., in order to determine that the medical information exists. (See 29 CFR 1910.20(e)(3) and TOSHA Instruction CPL 2.22, paragraph F.4.) In doing so:

- a. TOSHA compliance personnel should verify employer compliance with medical recordkeeping requirements by interviewing employer and employee representatives, employees, and, where appropriate, physicians
- b In addition, compliance officers may want to verify compliance by seeing the records. Where medical records are used to verify compliance:

(1) Documentation of noncompliance will comprise only the employee's

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name and the violation, not the specific medical information

- (2) Documentation of compliance will consist of a statement attesting to a check of some of the records and compliance with the specific recordkeeping requirements.
 - (3) No analysis is to be made of the medical content of the file. If copying or reviewing the records is necessary, the Area Supervisor must follow the procedures set forth in TOSHA Instruction CPL 2.22 (e.g., appoint a Principal TOSHA Investigator and obtain an access order where applicable).
2. TOSHA compliance personnel are also permitted access (for compliance purposes) to biological monitoring results which directly assess the absorption of a substance or agent by body systems. These results are treated by 29 CFR 1910.20(c)(5)(ii) as exposure records. Examples are:
 - a. Blood lead levels.
 - b. Urine mercury.
 - c. Urine phenols.
 - d. Urine monoacetylbenzidine.
 - e. Exhaled carbon monoxide
 - f. Hair assays
 - g. Fingernail assays.
 - h. Carboxyhemoglobin.
3. Authorization procedures for access to biological monitoring results that involve the evaluation or the physiological status of a body system are described in TOSHA Instruction CPL 2-2.30.
4. Authorization procedures for access to medical opinions mandated by existing standards are described in TOSHA Instruction CPL 2-2.29.
5. Access to medical information other than that specified in paragraphs E.1. through 4. above will require a written access order (TOSHA Instruction CPL 2.22, paragraph H.) unless:
 - a. Specific written consent of an employee is obtained pursuant to 29 CFR 1910.20(e)(2)(ii), and the Division of Occupational Safety and Health (TOSHA) or an employee thereof is listed on the authorization as the designated representative to receive the medical information.
 - b. A TOSHA contract physician consults with an employer's physician pursuant to TOSHA Instruction CPL 2.22, paragraph F.4.b.

- c. TOSHA access to, or the use of, personally identifiable employee medical information is obtained in the course of litigation.

NOTE: Even in circumstances where management voluntarily will release employee medical records to TOSHA, a written access order is necessary unless the situation falls into one of the categories described in paragraphs E.5.a. through c. above.

F. PROCEDURES FOR TOSHA ACCESS TO MEDICAL RECORDS:

1. Employee Written Consent.

- a. Compliance officers may seek employee written consent for the release of medical record information, but only after the following steps are taken:

- (1) Determine that there is an identifiable and supportable need to gain access to the medical records for TOSHA enforcement purposes.

Specify what laboratory tests, examination results, or other specific medical record will be looked at for each employee, based upon known or suspected occupational exposures and the known or suspected toxicity for such exposures.

Have available the range of normal values for each laboratory test to be examined (based on actual laboratory normal values or accepted normal values from a standard text).

- (4) Prepare an authorization letter which contains all of the information outlined in 29 CFR 1910.20(c)(10)(i) to be used when obtaining an employee's written consent. (See Appendix A to 29 CFR 1910.20.)

Obtain the approval of the Area Supervisor.

Explain to each affected employee:

- a) TOSHA's need for access to his/her medical record;
- (b) TOSHA's administrative procedures for assuring that the records are kept confidential (TOSHA Instruction CPL 2.22);
- (c) The employee's right to refuse TOSHA's request for written consent; and
- (d) That no action will be taken against the employee if he/she refuses to give written consent.

- b The Area Supervisor shall:

Determine whether there is an identifiable and supportable need to gain access to the medical records for TOSHA enforcement purposes.

- (2) Ensure that an authorization letter which contains all of the information outlined in 29 CFR 1910.20(c)(10)(i) is used when obtaining an employee's written release. (See Appendix A to 29 CFR 1910.20.)
 - c. Whenever medical records are obtained pursuant to employee written consent, the Area Supervisor shall:
 - (1) Promptly name a Principal TOSHA Investigator to ensure protection of the information.
 - (2) Notify the Chief of Health Standards Enforcement (TOSHA Medical Records Officer pursuant to TOSHA Instruction CPL 2.22, paragraph G.2.) of the Principal TOSHA Investigator's identity.
 - (3) Ensure that the personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of TOSHA Instruction CPL 2.22, paragraphs L. through Q.
 - d. Whenever employees do not consent to TOSHA access to their medical information, requests for a written access order shall include such objections. (See paragraph IV.2.e. of Appendix A to this instruction.)
2. Restriction of Off-site Review. Access to personally identifiable employee medical information, whether via employee consent or access order shall be done on-site, if practicable. A minimum of such information (only that which may be needed to support a citation) shall be recorded for enforcement purposes and/or taken off-site.
3. Restriction of Nonspecific Review. Compliance officers are not authorized to examine medical records for the purpose of identifying trends of illnesses which are not directly related to the recognized adverse effects of specific substances or agents. Thus, the compliance officer is not to do investigative research or conduct a wholesale investigation of medical records to identify possible problems.
4. Identifying Abnormalities. Compliance personnel shall use the normal ranges for the laboratory conducting the test, if available, or normal values established in accepted medical texts. When an abnormality is identified, the compliance officer shall investigate the abnormality through one or more of the following mechanisms:
 - a. Consult with the examining physician or health care personnel in charge of or who has access to the medical records. If, based on this consultation, the compliance officer determines that no further investigation is necessary, documentation shall be made in the case file of:
 - (1) Whose records and which tests were examined
 - (2) The rationale for examining those tests

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- (3) All abnormalities found (without personally identifiable information). If it is impossible to ensure the confidentiality of abnormal laboratory results because of a limited number of worker's records, however, then the abnormalities should not be listed. Note only that they were found and discussed with the medical personnel.
- (4) The name(s) of the medical personnel with whom the compliance officer discussed the results.

NOTE Personally identifiable information shall be removed from all field notes concerning these test results once a decision has been made that no further action is necessary.

- b. If the procedure described in paragraph F.4.a. above was not followed or it was followed but no satisfactory response was given, the Area Supervisor shall contact the Chief of Health Standards Enforcement who, in turn, shall obtain the services of a medical consultant.
5. Notifying Employees of Abnormal Results. The compliance officer shall ensure that appropriate notification of all workers with detected abnormalities is given.
 - a. When abnormalities have been satisfactorily explained by the employer's physician, the compliance officer shall investigate whether the physician notified the employee of the results. If the physician has not, a citation may be appropriate.
 - b. When the services of a TOSHA contract physician have been used, the compliance officer shall ensure that the physician notifies the employee(s) of any abnormalities found.
 6. Confidentiality. TOSHA compliance officers have the responsibility to maintain the confidentiality of all medical information and records.
 - a. The compliance officer shall not discuss any of the information found in the records, which is or could be identified with specific individuals, with any employer or employee representatives except the physician or health care personnel in charge of or who has access to employee medical records. This restriction applies even in situations where such medical information may be known to those specific (or other) individuals.
 - b. However, the compliance officer may reveal the following information to an employee whose medical record has been looked at:
 - (1) The laboratory test(s) examined;
 - (2) The rationale for examining that test(s);
 - (3) The normal ranges used and the sources of these ranges; and
 - (4) The numerical test result if known by the compliance officer

NOTE:

- (a) Under no circumstances should the compliance officer attempt any further discussion with the employee of the meaning of the results, conclusions, interpretations, diagnoses, etc. These judgements can be made only in view of the total medical record and only by an examining physician. If the employee wants clarification, he/she shall be referred to a physician for any discussion of test results.
 - (b) The compliance officer shall not examine the medical records solely to inform an employee of his/her results.
7. Access Denied. Whenever an employer refuses to honor an access order, or whenever TOSHA is denied access to employee exposure and/or medical records without the need for a written access order:
- a. Obtain an administrative subpoena from the Central Office
 - b. Where the employer refuses to honor the administrative subpoena, notify the Staff Attorney through the Chief of Health Standards Enforcement. The Staff Attorney will attempt to obtain a court order for enforcement of the administrative subpoena.
 - c. Do not cite for violations of 29 CFR 1910.20(e)(3)(i)
8. Citations.
- a. If abnormalities have been detected which have not been adequately explained by the medical personnel, the Area Office should consult with the Central Office before using this information to support a citation. (See paragraph F.4.a. of this instruction.)
 - b. Where proper employee notification of abnormalities has not occurred, the Area Office should consult with the Central Office before using this information to support a citation or before citing a specific health standard requirements for informing employees of their medical conditions.
 - c. Documentation to support a citation shall include personally identifiable information. However, this information shall not be disclosed on the citation.

G. PRINCIPAL TOSHA INVESTIGATOR:

- 1. The Principal TOSHA Investigator shall be:
 - a. A TOSHA professional trained in medicine, public health, or allied fields (industrial hygiene, epidemiology, toxicology, biostatistics, environmental health, etc.).
 - b. Determined on a case-by-case basis, depending on the necessary professional qualifications.

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2. Where a TOSHA Industrial Hygienist (CO) is to serve as a Principal TOSHA Investigator, the following additional guidelines apply:
 - a. The CO shall generally be a field-qualified Industrial Hygienist, grade IH-2 or higher.
 - b. Industrial hygiene trainees in grade IH-1 may not be Principal TOSHA Investigators.
 - c. In team inspections, the team leader shall normally be designated the Principal TOSHA Investigator.

H RESPONSIBILITIES OF AN AREA OFFICE FOR OBTAINING A WRITTEN ACCESS ORDER:

The Area Supervisor shall:

- a. Review written access order requests for their adequacy and need.
- b. Determine if there is a need to consult with the Staff Attorney on the matter.
- c. Consult with the TOSHA Medical Records Officer, where necessary, for assistance (e.g., advice on the professional qualifications needed for the Principal TOSHA Investigator, merits of supporting evidence justifying access, etc.)
- d. Ensure that, where an access order has been determined to be necessary:

Both the access order and an accompanying cover memorandum to the TOSHA Medical Records Officer are expeditiously prepared.

The original and two (2) copies of both the access order and cover memorandum are immediately sent to the TOSHA Medical Records Officer.

- e. Ensure that the Principal TOSHA Investigator is notified of any instructions from the TOSHA Medical Records Officer.
- f. Promptly notify the TOSHA Medical Records Officer by telephone of significant written objections concerning access to records pursuant to a written access order, whenever there is a need for the Medical Records Officer to be briefed on any unusual or important concerns.
- g. ~~Designate~~ *Principal TOSHA Investigator(s).*
- h. Ensure that the information for an access order is expeditiously telephoned to the TOSHA Medical Records Officer.

Forward access orders prepared at the Area Office to the Central Office (ATTN: Chief, Health Standards Enforcement). The TOSHA Medical Records Officer will send the access order back to the Area Office after completion.

- j. Sign the cover letter that accompanies the access order after receiving the order from the TOSHA Medical Records Officer.

- k. Ensure that Principal TOSHA Investigators encourage anyone who objects orally to a written access order to make his/her objections known in writing.
- l. Ensure that the TOSHA Medical Records Officer is promptly notified by telephone of the receipt of written objections concerning access to records pursuant to an access order.
- m. Ensure that all requests for public or inter-agency transfer of personally identifiable employee medical information are forwarded to the TOSHA Medical Records Officer. No personally identifiable medical records shall be transferred or disclosed without the written approval of the Director.
 - (1) Removal of direct personal identifiers. (See TOSHA Instruction CPL 2.22, paragraph K.)
 - (2) Security procedures. (See TOSHA Instruction CPL 2.22, paragraph M.)
 - (3) Retention and destruction of records. (See TOSHA Instruction CPL 2.22, paragraph N.)
 - (4) Results of Agency analysis using personally identifiable employee medical information. (See TOSHA Instruction CPL 2.22, paragraph O.)
- 2. The Principal TOSHA Investigator shall ensure that the examination and use of all personally identifiable employee medical information is performed in the manner prescribed by:
 - a. The written access order.
 - b. The requirements of TOSHA Instruction CPL 2.22, paragraphs H. through Q.

Any TOSHA Area Office Instruction for protecting the employee medical information.

I REQUEST FOR WRITTEN ACCESS ORDER:

- 1. Written access order requests shall include:
 - a. A cover memorandum from the Area Supervisor to the TOSHA Medical Records Officer, bring the request to his/her attention.
 - b. A written access order prepared in accordance with the procedures described in TOSHA Instruction CPL 2.22, paragraph H.3., and Appendix A of this instruction, for the signature of the Director.

Use Appendix A of this instruction as a model for the format and content of the request for a written access order.

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- J. PRESENTATION OF WRITTEN ACCESS ORDER: TOSHA Instruction CPL 2.22, paragraph I., describes the mechanisms of presenting a written access order to the employer and notifying employees of its existence. Use Appendix B. of this instruction as a model for the format and content of the required accompanying cover letter.
- K. PREVIOUSLY OBTAINED RECORDS: Area Offices shall ensure that all known files on hand containing personally identifiable employee medical information obtained prior to March 1, 1982, shall be:
1. Transferred to the TOSHA Medical Records Officer if the information is not being used actively, but may be needed for future use (as defined by the MRO). Medical records shall not be sent to the TOSHA Medical Records Officer without his/her approval.
 2. After notifying the TSOHA Medical Records Officer and obtaining his/her approval, destroyed or returned to the original medical care record holder if no longer needed for the purposes for which it was obtained.
 3. Made devoid of direct personal identifiers, coded, kept secured, and used according to TOSHA Instruction CPL 2.22 if the information is actively being used.
- L. EMERGENCY SITUATIONS: Any situations in which it appears, in the judgement of the Area Supervisor, that the content of employee medical records could precipitate the initiation of emergency procedures (e.g., imminent danger situations) shall be handled in accordance with the following procedures:
1. TOSHA Field Operations Manual (FOM), Chapter IX.
 2. A request for a written access order shall be accomplished in the most expeditious manner possible. All initial communications between the Area Office and the Central Office (TOSHA Medical Records Officer) shall be conducted by telephone and documented in the case file. If appropriate, the written access order can be prepared in the Central Office.
 3. In the absence of the Director, written access orders may be signed by persons occupying the following positions, and in the precedence listed, under emergency circumstances:
 - a. Assistant Director
 - b. Chief, Health Standards Enforcement TOSHA Medical Records Officer)
 - c. Chief, Technical Resources
 - d. Chief, Standards & Procedures.
- M. ACTION:
- 1 TOSHA personnel, particularly Area Supervisors, shall ensure that the practices and procedures outlined in this instruction are used in conjunction with the provisions of TOSHA Instruction CPL 2.22 to regulate

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the manner in which TOSHA seeks access to and uses employee medical and exposure records.

2. Personnel shall annotate the affected document and the referenced documents (see paragraphs C.2. and 3. of this instruction) in accordance with TOSHA Instruction ADM 5.2.

N EFFECTIVE DATE: This instruction is effective upon receipt and shall remain in effect until cancelled or superseded.

REQUEST FOR A WRITTEN ACCESS ORDER

- I. COVER MEMORANDUM: A brief cover memorandum shall be written from the Area Supervisor to the TOSHA Medical Records Officer (MRO) bringing the request to his/her attention. The cover memorandum and accompanying enclosures shall be marked "CONFIDENTIAL".
- II. SAMPLE WRITTEN ACCESS ORDER: The access order shall be prepared on letterhead stationery in the following format completed by inserting the applicable information described in Section III of this appendix (numbered blanks refer to corresponding numbered paragraphs in Section III):

To (employer):

Pursuant to the Tennessee Occupational Safety and Health Act of 1972 as amended (Tennessee Code Annotated, Title 50, Chapter 5) and 29 CFR 1910.20(e)(3) adopted by Tennessee Department of Labor Rules pursuant to T.C.A. § 50-507, you are hereby required to make certain employee medical records available for examination and copying by authorized officials of the Department of Labor, Division of Occupational Safety and Health (TOSHA). You must provide access to the medical information listed below on all employees listed in Attachment Number 1 to this Access Order.

You are hereby required to make available 1

The Director, Division of Occupational Safety and Health, has determined that it is necessary for Agency personnel to examine this employee medical information to ensure safe and healthful working conditions for employees at the (name of company/establishment).

The statutory purpose for seeking Agency access to this information is to determine 2.

The Director has also determined that it is necessary to examine this medical information in a personally identifiable form because the Agency has reason to believe that the specific employees covered by this order are those employees most likely to be experiencing occupational health problems from workplace exposure to (name toxic substance(s) or harmful physical agent(s)).

Supporting further the need to examine this information, 3

If a review of the medical information covered by this order indicates that occupational health problems are occurring, TOSHA will closely investigate the possible causes of these problems. Personally identifiable information is thus necessary both to specify whose records are to be examined, and to enable a complete investigation of all relevant information in the medical records. In addition, the investigation will also involve evaluating information from employee interviews or other sources.

Agency access to the personally identifiable medical information covered by this order shall be provided in the following manner:

The following TOSHA official has been designated as the Principal TOSHA Investigator:

5

The following individuals employed by the Division of Occupational Safety and Health or under contract with the Agency have been authorized by the Director to review this medical information based on their professional qualifications:

6

The Division of Occupational Safety and Health has published a detailed directive covering Agency practice and procedure governing TOSHA's conduct, which is designed to protect employee privacy interests. A key person in the overall administration of this directive (TOSHA Instruction CPL 2.22; dated March 1, 1982) is the Chief, Health Standards Enforcement Branch, designated the TOSHA Medical Records Officer:

7

(Name MRO) will have personal responsibility for ensuring that all medical records are protected under the guidelines outlined above, as mandated in TOSHA Instruction CPL 2.22. Written objections, questions, or comments concerning access to employee medical records should be addressed to this official.

(name)
Director, Division of
Occupational Safety and Health

(name)
TOSHA Medical Records Officer

ATTACHMENT NUMBER 1

(8)

III ACCESS ORDER INFORMATION: Each of the numbered paragraphs of this section provides details, guidelines, and examples of the information to be included in the corresponding numbered blank in the preceding sample written access order, Section II. of this Appendix.

1. Generally describe the kind of medical information that will be examined
For example:

You . . . available any and all medical records in connection with employee exposure to lead, for those employees identified, including records in connection with the following items:

- a. Work and medical histories, with particular attention to the following:

- (1) History of exposure to lead, both occupational and nonoccupational, including, where available, air monitoring data and history of job descriptions for each worker.
- (2) Past medical history including history of hospitalizations and medications.
- (3) All information on current or previous symptoms and/or complaints (including the review of systems and the absence of symptoms or complaints) with respect to the gastrointestinal, hematological, renal, cardiovascular, reproductive, and/or neurological systems.

Personal habits (smoking, hygiene, etc.)

- b. Results of physical examinations, including results pertaining to blood pressure measurements, teeth, gums, the hematological, gastrointestinal, cardiovascular, and neurological systems and all negative findings with respect to the aforementioned systems.
- c. All laboratory values relating to the above systems, including but not limited to:

Blood lead levels

Hemoglobin and hemocrit determinations, red cell indices, and examinations of peripheral smear morphology.

Blood urea nitrogen.

- (4) Serum creatinine.

- (5) Urinalyses, including microscopic examinations.

All pulmonary function tests.

ZPP levels

Any laboratory and/or other tests which an examining physician has deemed necessary.

- d Any and all physician recommendations and/or diagnoses with respect to the aforementioned work and medical histories, physical examinations, and/or laboratory values.

2. Describe the purpose for seeking access to this medical information. For example:

"The statutory purpose for seeking Agency access to this information is to determine employer compliance with the medical surveillance and medical removal protection program (and associated recordkeeping requirements) specified in paragraphs (j), (k), and (n) of TOSHA's lead standard, 29 CFR 1910.1025 as adopted in Chapter 0800-1-1 of the Rules of the Department of Labor."

3. Summarize any additional supporting evidence such as the information outlined in Section IV - Attachments of this appendix. For example:

"Supporting further our need to examine this information, we have in our custody several letters sent by the employer to employees indicating elevated blood lead levels. In addition, we also have an article printed in the (name of newspaper, magazine, etc.) in which the company acknowledged the problem of its employees being overexposed to lead."

"The company was previously cited for overexposure to lead in 1974, 1976, and 1977. Engineering controls and/or administrative controls were required to control the overexposure. Respirators were required as an interim measure. Overexposures were also found during the most recent inspection conducted in November and December of 1981."

"Prolonged absorption of lead could result in severe gastrointestinal disturbances and anemia. With more serious intoxication there is neuromuscular dysfunction while extremely severe lead exposures may result in encephalopathy."

4. Give a step-by-step chronology of how the records will be obtained, reviewed, and stored, specifying the following:
- Who will be in charge of on-site review of the records, or who will take possession of the records for off-site review.
 - Where TOSHA will review the records
 - When TOSHA review or receipt of the records is to take place. (If practicable, consistent with the nature of the investigation, allow the employer a reasonable period of time prior to TOSHA access in order to locate, comply, and provide the required records.)
 - Whether or not the medical information will be examined on-site and what type of information will be copied and removed off-site. (For example, at the time and place access is provided TOSHA shall review the medical information on-site. The only records which will be copied and taken off-site are those records which, after initial review, indicate the possibility of occupational health problems.)
 - How personal identifiers will be segregated from the medical information and how long this information will be kept. (For example, to the extent personally identifiable employee medical information is taken off-site, personal identifiers will be promptly stripped from the medical information, uniquely coded, and maintained separately from the medical information. All personally identifiable medical information will be destroyed at the completion of any enforcement action arising from this investigation.)
5. Name the Principal TOSHA Investigator and give his/her business address and telephone number.

6. Give full names and titles of these individuals. The persons listed will have the authority to permit limited access to other TOSHA employees (both professional and clerical) who have a limited need for access; thus such employees with limited need for access generally do not have to be listed on the access order.
7. Give the TOSHA Medical Records Officer's full name, business address, and telephone number.
8. On Attachment Number 1 to the written access order, identify the persons whose records are being sought, either by name, job classification, time clock number, department, or similar identifier.

IV. ATTACHMENTS: The following information shall be included, as applicable, as attachments to the request for a written access order:

1. A brief statement of the professional qualifications of the designated Principal TOSHA Investigator which make him/her qualified to review the records. This is not necessary when this person is designated by the Central Office.
2. A summary of the applicable information gathered during the inspection or preinspection which was considered when determining the need for a written access order. For example, information obtained from:
 - a. Interviews with the employer, employee representatives, or physicians.
 - b. Examination of exposure data, biological monitoring data, or medical information obtained without the need for a written access order, or information obtained from a previous access order.
 - c. Evaluation of engineering controls and work practices, respirator program, personal protective equipment, training program, and medical surveillance program.
 - d. Articles from newspapers, magazines, etc
 - e. Any objections concerning TOSHA access to employee medical information
3. Any additional information requested by the TOSHA Medical Records Officer.

SAMPLE COVER LETTER

(Letterhead Stationery)

Dear (employer):

On (date of access order) the Director, Division of Occupational Safety and Health, Tennessee Department of Labor, approved a formal written access order, attached, requiring that you make certain portions of specific employee medical records available for inspection and copying by Division of Occupational Safety and Health (TOSHA) officials. A copy of this letter must be posted along with the written access order, except that Attachment Number 1 to the order, which lists the names and/or job classifications of employees whose records are requested, shall not be posted.

The Tennessee Occupational Safety and Health Act of 1972 as amended (Tennessee Code Annotated, Sections 50-501 through 50-579) authorizes TOSHA access to employee medical records in certain circumstances, such as those applicable here (see 29 CFR 1910.20(e)(3) adopted by Department of Labor Rule 0800-1-1-.14(d)1. pursuant to T.C.A. § 50-507). The Agency recognizes, however, that there are often substantial personal privacy interests involved with employee medical records. Thus, the Agency has published strict guidelines (set forth in TOSHA Instruction CPL 2.22) that govern TOSHA's access to personally identifiable employee medical records, and protect legitimate privacy interests. These guidelines govern when and how TOSHA will seek access to medical records, who can use this information and for what purposes, and how TOSHA will safeguard these records once they are in the Agency's possession.

The written access order attached to this letter is the result of careful Agency consideration of these matters as they apply to your worksite. The access order states what is being requested and why; who is authorized to review and analyze the information obtained; and other matters that inform you of TOSHA's actions regarding access to these medical records.

If you, or your employees or their representatives have questions or objections concerning the access order, you should feel free to contact the Principal TOSHA Investigator or the TOSHA Medical Records Officer, whose names, addresses, and telephone numbers are listed on the access order. Employee representatives, of whom we are aware, include the following:

(List employee representatives, If none, omit last sentence above and the following sentence.)

A copy of this letter and the access order (excluding Attachment Number 1) has been sent to the employee representatives listed above.

Your cooperation in this matter will be appreciated. TOSHA access to personally identifiable medical information will be limited to only that which is necessary to carry out this investigation. The goal of the investigation is to assure safe and healthful working conditions for employees of your establishment. All medical

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information will be protected in accordance with the provisions of TOSHA Instruction CPL 2.22; dated March 1, 1982; Subject: Access to Employee Medical Records.

Sincerely,

 Area Supervisor
Health Standards Enforcement Branch

Attachment; Access Order

